

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chart Riggall	Team: Squad #4	CCRB Case #: 201807080	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/14/2018 3:05 PM	Location of Incident: 85th Street and Fort Hamilton Parkway	Precinct: 68	18 Mo. SOL 2/14/2020	EO SOL 2/14/2020	
Date/Time CV Reported Tue, 08/14/2018 5:52 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/27/2018 10:57 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Roder	25253	935610	068 PCT
2. POM Hassan Gheith	07404	938557	068 PCT
3. POM Manuel Martinez	03482	955136	068 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Nancy Afaneh	04290	952385	068 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Manuel Martinez	Force: Police Officer Manuel Martinez used physical force against § 87(2)(b)	
B.POM Manuel Martinez	Force: Police Officer Manuel Martinez used physical force against § 87(2)(b)	
C.POM Manuel Martinez	Discourtesy: Police Officer Manuel Martinez spoke discourteously to § 87(2)(b)	
D.POM Hassan Gheith	Force: Police Officer Hassan Gheith used physical force against § 87(2)(b)	
E.POM Michael Roder	Discourtesy: Police Officer Michael Roder spoke discourteously to § 87(2)(b)	

### Case Summary

On August 14, 2018, Sgt. Gerard Iucci of the 68<sup>th</sup> Precinct reported this incident to the IAB Command Center by telephone on behalf of § 87(2)(b). On August 27, 2018, it was received by the CCRB.

On August 14, 2018, at approximately 3:05 PM, in the vicinity of 85<sup>th</sup> Street and Fort Hamilton Parkway in Brooklyn, PO Manuel Martinez and PO Nancy Afaneh of the 68<sup>th</sup> Precinct stopped § 87(2)(b)'s vehicle for running a stop sign. After determining that § 87(2)(b)'s driver's license was suspended, the officers ordered him out of the vehicle and told him to put his hands behind his back. PO Martinez took § 87(2)(b) to the ground (**Allegation A: Force, § 87(2)(g)**), and continued to punch § 87(2)(b) in the face and head (**Allegation B: Force, § 87(2)(g)**). While attempting to subdue § 87(2)(b), PO Martinez told § 87(2)(b) to "put [his] hands behind [his] fucking back," and several variations thereof (**Allegation C: Discourtesy, § 87(2)(g)**). PO Michael Roder and PO Hassan Gheith responded to the scene, and PO Gheith punched § 87(2)(b) at least five times (**Allegation D: Force, § 87(2)(g)**). After § 87(2)(b) was handcuffed, PO Roder said to him, "Yeah, you are gonna get fucked" (**Allegation E: Discourtesy, § 87(2)(g)**).

§ 87(2)(b) was arrested and charged with § 87(2)(b)

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

Body-worn camera footage of the incident was obtained and is discussed below.

### Findings and Recommendations

**Allegation (A) Force: Police Officer Manuel Martinez used physical force against § 87(2)(b)**

**Allegation (B) Force: Police Officer Manuel Martinez used physical force against § 87(2)(b)**

**Allegation (C) Discourtesy: Police Officer Manuel Martinez spoke discourteously to § 87(2)(b)**

**Allegation (D) Force: Police Officer Hassan Gheith used physical force against § 87(2)(b)**

It is undisputed that after PO Martinez and PO Afaneh asked § 87(2)(b) to step out of the car and put his hands behind his back, § 87(2)(b) did not comply. PO Martinez forcibly took § 87(2)(b) to the ground and punched him multiple times. PO Afaneh requested an additional unit, and PO Roder and PO Gheith responded. PO Gheith punched § 87(2)(b) at least five times, after which he, PO Roder, and PO Martinez successfully handcuffed § 87(2)(b).

§ 87(2)(b) (BR 02) said that, before he was taken to the ground, PO Martinez punched him in the face twice within 10 seconds of his exiting of his car. PO Martinez then hugged § 87(2)(b) around his mid-section, picked him up, and slammed him to the pavement § 87(2)(b) compared this to being "suplexed"). He ended up on his back with PO Martinez on top of him. PO Martinez then repeatedly punched § 87(2)(b) in the head, approximately 10 to 15 times over the course of 30 to 40 seconds. § 87(2)(b) attempted to block these punches with his arms.

Following this, § 87(2)(b) felt a series of punches and kicks all over his body, which were now coming from three separate officers. These totaled at least 15 strikes. He was then handcuffed. § 87(2)(b) did not allege any force used by PO Afaneh. § 87(2)(b) confirmed that he watched body-worn camera footage of the incident during the discovery portion of his criminal trial.

§ 87(2)(b) refused to sign HIPAA forms. He provided photographs that he took of his injuries on August 15, 2018, the day after the incident (BR 03). The photographs depict an abrasion to his left cheek, swelling on his forehead, and multiple bruises and abrasions to his right arm and back. He also provided doctor's notes from a visit on August 16, 2018 to § 87(2)(b) (BR 04). His arrest photograph depicts the abrasions to his face (BR 05).

PO Martinez (BR 06) said that § 87(2)(b) was openly hostile towards the officers throughout the initial car stop, making such remarks as, "Get the fuck away from my car," and, "Nobody likes cops." When he ordered § 87(2)(b) out of his car, he initially complied, but when PO Martinez told him to put his hands behind his back, § 87(2)(b) pulled his arms away and moved in circles around PO Martinez. After telling § 87(2)(b) to put his hands behind his back three to four times, PO Martinez wrapped his arms around § 87(2)(b)'s midsection, picked him up, and took him to the ground. He denied § 87(2)(b)'s allegation that he punched him prior to this forcible takedown.

PO Martinez went to the ground with § 87(2)(b) and ended up on top of him, facing down, while § 87(2)(b) faced upwards. He initially denied that he punched § 87(2)(b). However, after being informed of § 87(2)(b)'s allegations that he was punched by PO Martinez, PO Martinez acknowledged that he might have punched § 87(2)(b) once or twice. He acknowledged that these punches were likely directed at § 87(2)(b)'s head, and explained that he did so because he was becoming tired and needed to overcome § 87(2)(b)'s resistance. When PO Gheith and PO Roder arrived, the officers were able to roll § 87(2)(b) on to his stomach and handcuff him. PO Martinez did not initially recall seeing PO Gheith punch § 87(2)(b).

PO Martinez said that he used profanity towards § 87(2)(b) due to the "hectic" and "hostile" nature of the situation.

PO Afaneh (BR 07) had a limited recollection of the incident, but was generally consistent with PO Martinez. She denied using any force against § 87(2)(b) besides attempting to help pull his hands behind his back.

PO Gheith (BR 08) and PO Roder (BR 09) said that when they arrived, § 87(2)(b) and PO Martinez were both "wrestling" on the ground, with PO Martinez trying to handcuff § 87(2)(b). PO Martinez was telling § 87(2)(b) to stop resisting and put his hands behind his back. PO Roder said that he only assisted in rolling § 87(2)(b) on to his stomach and pulling § 87(2)(b)'s right arm behind his back. PO Gheith initially only recalled punching § 87(2)(b) once, in his ribs, in order to gain compliance from him. After viewing the below body-worn camera footage, he acknowledged the additional punches to § 87(2)(b)'s head depicted in it, and said that they were used to the same end, gaining compliance.

The TRI reports prepared by PO Afaneh, PO Martinez, and PO Gheith were consistent with their testimony and include photos of § 87(2)(b)'s injuries (BR 10).

Body-worn camera footage from PO Martinez and Afaneh's cameras is embedded below.



The video from PO Afaneh's camera captures § 87(2)(b) pushing away from PO Martinez while they are both still standing. PO Martinez then takes § 87(2)(b) to the ground as described above. They end up face to face, with PO Martinez on top. One punch by PO Martinez to § 87(2)(b)'s face is visible. § 87(2)(b) attempts to push PO Martinez's hands away from him. At the 1:01 mark, PO Martinez rolls § 87(2)(b) so that he is face-down, and punches § 87(2)(b) twice in the side/rear area of his head. At the 1:10 mark, PO Gheith and PO Roder arrive. PO Gheith punches § 87(2)(b) several times; at least four are depicted. The visible punches are directed at § 87(2)(b)'s torso. § 87(2)(b) is successfully handcuffed at the 1:39 mark. Throughout the process of attempting to handcuff § 87(2)(b) both before and after the arrival of PO Gheith and PO Roder, PO Martinez can be heard saying, "Put your hands behind your fucking back," and several variations thereof.

Patrol Guide Procedure 221-01 (BR 11) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. The following factors should be considered when determining whether the force used was reasonable: 1) the nature/severity of the crimes/circumstances, 2) actions taken by the subject, 3) duration of action, 4) immediacy of the perceived threat, 5) whether the subject is actively resisting custody, 6) whether the subject is attempting to evade arrest by flight, 7) number of subjects in comparison to the number of MOS, 8) size, age, and condition of the subject in comparison to MOS, 9) subject's violent history, if known, 10) the presence of a hostile crowd, and 11) whether the subject is apparently under the influence of a stimulant or narcotic.

Limited profanity, when used to maintain order in a stressful street encounter, does not constitute misconduct. *NYPD v. Court*, DCT 79627/04 (BR 12).

[REDACTED]

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§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation (E) Discourtesy: Police Officer Michael Roder spoke discourteously to § 87(2)(b)**

It is undisputed that, after § 87(2)(b) was handcuffed, he said “You guys are gonna get fucked.” PO Roder responded, “Yeah you’re right, you are gonna get fucked.”

§ 87(2)(b) did not make this allegation during his interview. It was, however, captured on body-worn camera footage, as depicted below.



Allegation F - 1.mp4



Allegation F - 2.mp4

The first video offers clearer audio of the statement, while the second depicts PO Roder saying it.

PO Roder did not dispute making this statement and said he did not have a reason for doing so.

Police officers are prohibited from making discourteous or disrespectful remarks towards the public. Patrol Guide Procedure 203-10 (BR 13).

§ 87(2)(g)

[REDACTED]

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 14).
- PO Manuel Martinez has been a member of service for five years, and has been a subject in two prior CCRB complaints with three allegations, none of which were substantiated.

§ 87(2)(g)

[REDACTED]

- PO Hassan Gheith has been a member of service for thirteen years and has been a subject in six prior CCRB complaints with twenty-four allegations, five of which were substantiated. § 87(2)(g)
  - In 201702427, two allegations of a strip-search were substantiated.
  - In 201709023, allegations of a retaliatory summons and a stop were substantiated. § 87(4-b), § 87(2)(g)
- PO Michael Roder has been a member of service for fourteen years and has not been a subject in any prior CCRB complaints.

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b), on behalf of § 87(2)(b) filed a Notice of Claim with the City of New York claiming false arrest, emotional distress, negligence on the part of the New York City Police Department, and personal injury to the head, neck, chest, arms, legs, and back, seeking \$10,000,000 as redress (BR 15).

• § 87(2)(b)

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date